

REMARKS

The present amendment is responsive to the Office Action mailed in the above-referenced case on December 15, 2003. Claims 1-20 are presented for examination. In the Office Action the Examiner has rejected claims 1-20 under 35 U.S.C. 102(e) as being anticipated by Takano (US 5,926456) hereinafter Takano.

Applicant has carefully noted and reviewed the rejections, references, and the Examiner's comments and herein provides arguments to more particularly point the subject matter regarded as inventive, distinguishing unarguably over the reference of Takano as cited and applied by the Examiner.

Regarding claim 1, the Examiner proceeds to recite applicant's claim language, word for word, referencing columns and figures from the art of Takano. Applicant is frustrated with dealing with this tactic of quoting the applicant's claim language and attributing it to a reference in a general manner. In the Examiner's 102 rejections large, general portions of the reference are cited along with applicant's claim language with absolutely no remarks from the Examiner relative to how the Examiner reasons that the very different language of the reference teaches the limitations of applicant's claims. The practice of quoting the applicant's claim language and attributing it to the reference, in general, is not conducive to clear and equitable examination. The reference should be quoted for what it actually says, including some reasonable comments from the Examiner.

The Examiner states that Takano teaches all of the limitations of applicant's claim 1, referencing columns 1-3 of Takano. Applicant strongly disagrees with the Examiner's interpretation of Takano. Claim 1 recites the limitation of monitoring port status on a continuing or periodic basis. Takano teaches maintaining a register for failure RTG. The RTG sets failure internal

routing information (col. 2, line 55 through column 3, line 2). Applicant argues that failure information is entered to the RTG after a failure occurs and data is lost. Takano does not teach monitoring port status on a continuing or periodic basis.

Applicant's claim 1 recites updating a port-status table, listing port status as active or failed and an alternative destination for each port. Again applicant has reviewed columns 1-3 of Takano and finds that the RTG of Takano only lists failures, not active ports. Applicant argues that Takano has no disclosure to read on listing an alternative destination for each port. Takano discloses comparators and selectors associated with the RTG's for selecting alternative paths (col. 3, lines 8-14).

Applicant's claim 1 recites sending the received packet to the predestined port if the port is listed in the table as active, and sending the received packet to the alternative destination if the port is listed in the table as failed. As argued above, Takano only lists paths as failed, not active. Further, applicant argues that Takano does not assign specific alternative destination ports to working ports.

As a broad statement for the record, it appears the examination in this case is following the old path of investing prior art status in inventions that accomplish a similar purpose as the invention in examination, rather than following the principle that it is the actual limitations of the claim that must be found in the art. The problem with this approach in examination is that the rejections are not *prima facie*, in that they do not teach the actual physical limitations of the claimed method and apparatus. They only teach accomplishing a similar purpose in a different way.

Applicant believes that claim 1, as argued above, is clearly patentable over the art of Takano provided by the Examiner. Claims 2-6 are patentable on their own merits, or at least as dependent upon a patentable claim.

Regarding claims 7 and 13, applicant believes the arguments provided above easily serve to argue the patentability of these independent claims as

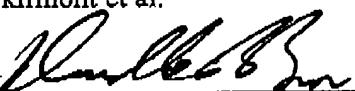
they hold limitations included in said argument. Claims 8-12 and 14-20 are patentable on their own merits, or at least as dependent from a patentable claim.

As all of the claims, as argued, are clearly shown to be patentable over the art of Takano, applicant respectfully requests that the rejections be withdrawn and that the case be passed quickly to issue.

If any fees are due beyond fees paid with this amendment, authorization is made to deduct those fees from deposit account 50-0534. If any time extension is needed beyond any extension requested with this amendment, such extension is hereby requested.

Respectfully Submitted,
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by



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